UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/627
16 November 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 627

Case No. 668: ZINNA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Mikuin Leliel Balanda; Mr. Hubert Thierry;

Whereas, on 29 April 1992, Eduardo Zinna, a staff member of the United Nations, filed an application requesting the Tribunal, inter alia:

"1. ...

(a) to uphold the relevant unanimous conclusions and recommendations of the Joint Appeals Board in its report ... of 18 December 1991 (...), in particular:

(i) '...that the Appellant's candidature for the post of Chief, IMIS [Integrated Management Information System] Project had not been given due consideration'; and

(ii) '...that the successful candidate should not have been considered for the subject post or short-listed or selected for it and that the fact that this candidate was considered had adversely affected the Appellant's terms of employment as the inclusion of the successful candidate on the short list had reduced the Appellant's chances of success in the competition for the subject post.'

2. ...

(a) to declare null and void and rescind all administrative decisions relating to the selection, appointment and promotion of the Chief, Integrated Management Information System (IMIS) project;

(b) to order that a more qualified candidate should be appointed from among those staff members who originally applied for the post;

(c) alternatively, to order the payment of appropriate compensatory damages in the amount of two years' net base salary to the Applicant, in accordance with article 9, paragraph 1 of the Tribunal's Statute; and

(d) in any case, to order the payment of appropriate damages in the amount of six months' net base salary to the Applicant as compensation for the breach of his terms of appointment resulting from the lack of proper consideration of his candidature for the subject post as well as from the arbitrariness and bad faith of the Administration."

Whereas the Respondent filed his answer on 16 September 1992;

Whereas the Applicant filed written observations on 30 April 1993;

Whereas the facts in the case are as follows:

Eduardo Zinna entered the service of the United Nations on 11 October 1969, as a Translator Trainee at the Department of Conference Services on a probationary appointment at the P-2, step I level. On 1 October 1971, he was granted a permanent appointment as a Translator at the P-3 level.

On 3 June 1974, the Applicant was transferred to the Department for Political Affairs, Trusteeship and Decolonization as a Political Affairs Officer and on 1 August 1977, to the Division for Policy Co-ordination, Planning and Information Section, Office of Personnel Services (OPS). On 1 April 1978, he was promoted to the P-4 level.

On 1 January 1981, the Applicant's functional title was changed to Acting Chief, Planning and Information Section, Division for Policy Co-ordination, OPS. The Applicant was promoted to the

P-5 level with effect from 1 April 1983. The Applicant was assigned to ONUVEN, Nicaragua, from 31 August 1989 to 7 March 1990 as Senior Election Monitor, and then to UNTAC from 8 January 1992 to 22 February 1993.

On 7 July 1989, the Applicant applied for the D-1 level post of Chief, Integrated Management Information System (IMIS) Project, in the Office of the Under-Secretary-General, Department of Administration and Management. The selection of candidates for the post was to be conducted in accordance with the procedures set forth in administrative instruction ST/AI/338 and its addenda, concerning the Vacancy Management System (VMS) then in force. At the time the vacancy announcement was issued, the Under-Secretary-General for Administration and Management had appointed with effect from 16 December 1988, another staff member, Ms. Christine Rollet "to take over ... [as Project Coordinator of IMIS] immediately since she has been involved with this project since its inception".

On 31 July 1989, the Director of Recruitment and Placement Division, Office of Human Resources Management (OHRM[1]) transmitted the Applicant's application, together with the applications of seven other candidates, to the Appointment and Promotion Board (APB). Listed in alphabetical order as meeting the requirements of the post were four candidates, the Applicant, Ms. Christine Rollet, the Acting Project Coordinator of IMIS, and two other staff members.

The APB considered all the applications and recommended, in a short-list, to the Department of Administration and Management, four staff members for final selection. Among them were Ms. Christine Rollet and the Applicant.

On 10 August 1989, the Acting Under-Secretary-General for Administration and Management informed the Assistant Secretary-General, OHRM, that he had selected Ms. Christine Rollet for the post of Chief, IMIS, with immediate effect.

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[1] Successor of OPS.

In a letter dated 29 August 1989, a Recruitment and Placement Officer informed Applicant that another staff member had been selected for the post of Chief, IMIS Project.

On 5 January 1990, the Applicant wrote to the Assistant Secretary-General, OHRM, expressing his concern "at the selection of a candidate for the post of Chief, IMIS". He asserted that "it would appear that the screening process was conducted on the basis of the candidates' fact sheets only - and with the participation of the candidate who was later selected - or rather confirmed - for the post". He expressed reservations concerning the "academic background, relevant experience or seniority" of the candidate chosen.

On 19 April 1990, the Applicant, pursuant to staff regulation 11.1, asked the Secretary-General "that a determined effort should be made to dispel my current doubts as to the selection of staff under the VMS through the clarification of the steps taken to fill the post of Chief, IMIS Project." This letter was treated by the Joint Appeals Board (JAB) as a request for review of the administrative decision appointing Ms. Chrisine Rollet as Chief, IMIS. On 19 June 1990, the Applicant wrote again to the Secretary-General and to the JAB, advising them of his intention to submit an appeal against the administrative decision regarding the appointment of the Chief, IMIS Project.

On 21 December 1990, the Applicant lodged and appeal with the JAB. The Board adopted its report on 18 December 1991. Its conclusions and recommendations read as follows:

> "Conclusions and recommendations
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> 46. The Panel concluded that the Appellant's candidature for the post of Chief, IMIS Project had not been given due consideration.
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> 47. The Panel concluded that the successful candidate should not have been considered for the subject post or short-listed or selected for it and that the fact that this candidate was considered had adversely affected the Appellant's terms of employment as the inclusion of the successful

candidate on the short-list had reduced the Appellant's chances of success in the competition for the subject post.

48. Regarding recommendations, the Panel noted that the Appellant had requested the JAB to recommend: (i) rescission of the administrative decisions connected with the selection for the subject post, (ii) selection of a more qualified candidate from those who applied, (iii) payment of compensatory damages to the Appellant, and (iv) keeping of the commitment made to the Appellant in [Under-Secretary-General for Administration and Management's] letter of 9 March 1988. The Panel considered that it could not entertain the request under i) above, as, for one thing, it was not a practical proposition; as for ii), the Panel considered that this was beyond its competence; as for iv), the Panel did not consider that the Respondent's actions with respect to the filling of the post of Chief, IMIS Project called for such a recommendation.

49. As for compensatory damages, the Panel, while not considering compensatory damages the proper term, decided to recommend that the Appellant be paid the sum of $1,000 in recognition of the fact that his terms of employment had not been observed.

50. The Panel further recommends that in future all candidates applying in response to vacancy notices be given all the consideration to which they are entitled. The Panel further recommends that, in any arrangement which may be substituted for the VMS [Vacancy Management System] in response to the recent decision of the Administrative Tribunal in the Upadhya case, safeguards should be built in to ensure that candidates for a post from outside a unit where a vacancy occurs receive equal consideration with candidates from inside that unit.

51. Finally, the Panel recommends that in future cases all applicable provisions of Administrative Instructions be carefully observed".

On 29 January 1992, the Director, Office of the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him of the Secretary-General's decision as follows:

"The Secretary-General does not agree with the Board's conclusions in paragraphs 46 and 47 of the report. It should be noted that, under paragraph 4 of ST/AI/338/Add.2, then in effect, a staff member who did not meet the seniority requirement for promotion set out in this paragraph could exceptionally be selected for placement under the vacancy management system and subsequently promoted on an accelerated basis. In this case, such an exception was made in view of the fact that the selected candidate was a staff member of unusual potential and with an exceptionally outstanding record of performance who met the minimum seniority for accelerated promotion as established by the Appointment and Promotion Board, namely, three years in the case of promotion from P-5 to D-1. Paragraph 14(f) of ST/AI/338/Add.5, then in effect, set out guidelines - not binding rules - concerning seniority. Such guidelines did not, however, preclude the above-mentioned exceptional selection under paragraph 4 of ST/AI/338/Add.2.

The Secretary-General has concluded that the selection of the Chief, IMIS Project, was properly based on an assessment of all the candidates on the short list. He is satisfied that his selection of an outstanding candidate as borne out by her performance record, albeit with less than five years' seniority, constituted a proper exercise of administrative discretion which did not in any way violate your rights or those of any other staff member on that short list. Accordingly, the Secretary-General does not accept the Board's recommendation for payment of compensation".

On 29 April 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The assignment of the Chief, IMIS Project on 16 December 1988, to the post was in violation of administrative instruction ST/AI/338 of 21 December 1986, paragraph 3, which provides that "programme managers may continue to reassign staff within their office to posts at the same level but not to higher level posts".

2. The Applicant was not properly considered for the post in question, nor for that matter was any other candidate, except Ms. Christine Rollet.

3. The Applicant's rights under his terms of appointment were adversely affected by the non-observance of the VMS procedures, resulting in the assignment of Ms. Christine Rollet to the said post.

4. The Chief, IMIS, improperly participated in the evaluation of candidates for IMIS posts, including the post for which she herself applied and such participation violated the Applicant's rights.

Whereas the Respondent's principal contentions are:

1. The assignment of staff is within the discretion of the Secretary-General. The assignment of the successful candidate to the post as an Acting Project Coordinator did not prejudge the final selection.

2. The Applicant has no right to promotion but only to due consideration of his candidacy, which it received both by the APB and the Department.

3. The selection process did not violate the Applicant's terms of employment as it was carried out pursuant to the VMS procedures.

4. The selected candidate did not participate in the evaluation of candidates for the post for which she herself applied.

The Tribunal, having deliberated from 25 October to 16 November 1993, now pronounces the following judgement:

I. In July 1989, the Applicant applied for the then newly established post of Chief, Integrated Management Information System (IMIS), at the D-1 level, in accordance with the Vacancy Management System (VMS) which was then in effect. At the time, the post was provisionally encumbered by Ms. Christine Rollet who discharged the functions of Coordinator of the Project.

II. Following the Respondent's decision to appoint Ms. Rollet permanently to the post in question, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB found that although the Applicant's candidacy had not been properly taken into account by the Respondent, the selection of Ms. Rollet did not affect the Applicant's rights. The JAB recommended that the Administration grant the Applicant US$1,000 for the failure to give due consideration to his candidacy. Upon the Administration's refusal to adopt this recommendation, the Applicant appealed to the Tribunal.

III. In his application, the Applicant asks for the rescission of the decision to appoint Ms. Rollet to the post for which he had applied. He contends that Ms. Rollet participated in the selection of candidates for the post for which she was herself a candidate. He also asks for the payment of various sums as compensation for the injury he allegedly suffered.

IV. The Respondent maintains that the assignment of a staff member is within the Secretary-General's discretion and that in this case, the appointment on a temporary basis of Ms. Rollet did not prejudge the selection of the Chief, IMIS. The Respondent adds that the only right of the Applicant is to have the Administration properly examine his application but that he does have a right to be promoted. Selection of a candidate in accordance with the VMS procedures does not, the Respondent argues, affect the rights of the Applicant. The Respondent maintains that Ms. Rollet did not participate in the examination of the applications for the post for which she herself had applied.

V. The Respondent appears to question the right of the Applicant to challenge the appointment of another staff member to a post. But the Tribunal has consistently recognized that a staff member competing for a post who is directly and adversely affected by the appointment of another staff member to the post, may appeal with

respect to an alleged injury to him or her, if any, in connection therewith. Hence, the Respondent's contention on this point lacks merit.

VI. The Applicant complains about the provisional appointment of Ms. Rollet as Acting Coordinator of the project. The Tribunal notes that the provisional appointment was made because of a need to insure continuation of the project. Ms. Rollet, who had prior involvement with the project, was in a position to do so. Under the circumstances, her temporary appointment was a reasonable exercise of discretion.

VII. The Tribunal finds, in addition, and contrary to the opinion of the JAB in its report of 18 December 1991, that the selection for the D-1 post of Chief was in accordance with the provisions of administrative instructions ST/AI/338/Add.2, paragraph 4 and ST/AI/338/Add.5, paragraph 2(a) in force at the time. Thereunder, a staff member could be selected, as in the present case, without the required five years of seniority, in exceptional circumstances. The record fully supports the conclusion that Ms. Rollet was eligible for accelerated promotion on the basis of her exceptional performance and that the Respondent properly complied with the vacancy management procedures.

VIII. The Tribunal notes, as is indicated by a letter of 29 January 1992, from the Director of the Office of the Under-Secretary-General for Administration and Management, that Ms. Rollet was appointed because of her exceptional merit and performance, as attested by her performance evaluation reports.

IX. Moreover, it is evident that the Applicant, having been shortlisted by the Appointment and Promotion Board, was duly considered for the post. In accordance with its jurisprudence, the Tribunal will not interfere with the Respondent's discretion in evaluating the qualifications of staff members for appointment to a

post, as long as the Charter, the Staff Rules and any other relevant texts have been respected and no extraneous factors tainted the exercise of such discretion. The Tribunal finds no irregularities in this case.

X. In the light of the above, the Tribunal considers that the selection of Ms. Rollet, in accordance with the above mentioned administrative instructions, did not infringe the rights of the Applicant. In addition, there is no evidence, attesting to the participation of Ms. Rollet in the selection of candidates for the post.

XI. The application is therefore unfounded and the Tribunal rejects it.

(Signatures)

Jerome ACKERMAN
President

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

New York, 16 November 1993

R. Maria VICIEN-MILBURN
Executive Secretary